

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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GERARDO FIGUEROA,

Plaintiff,

-v-

TRI-CITY HIGHWAY PRODUCTS, INC.,  
and MARTIN A. GALASSO, JR., *President*  
*of Tri City Highway Products, Inc.*,

Defendants.

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Civil Action No.  
3:08-CV-0868 (TJM/DEP)

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

FAUCI, FAUCI LAW FIRM  
43 Washington Avenue  
Endicott, New York 13761-0007

MICHAEL S. FAUCI, ESQ.

FOR DEFENDANTS:

GIRVIN, FERLAZZO LAW FIRM  
20 Corporate Woods Boulevard  
2nd Floor  
Albany , NY 12211-2350

SCOTT P. QUESNEL, ESQ.

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

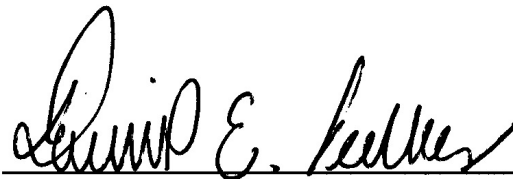
ORDER

On September 2, 2009 I issued an order in connection with this action in which, *inter alia*, I granted in part a motion by defendants Tri-City Highway Products, Inc. and Martin A. Galasso, Jr. to compel discovery and, based upon the plaintiff's unexcused failure to comply with the court's order dated June 30, 2009, awarded defendants costs and attorneys' fees incurred as a result of having to file the motion to compel, pursuant to Rule 37(b)(2)(C) of the Federal Rules of Civil Procedure. Dkt. No. 40. In that order, defendants' counsel was directed to submit an accounting of the costs and attorneys' fees claimed, and plaintiff was provided an opportunity to respond and voice any objections to the amounts sought. *Id.*

Having reviewed the subsequent submissions of defendants' counsel, in which recovery of a total of \$1,070.00 is sought (Dkt. No. 41), and an affidavit from plaintiff's counsel submitted in response (Dkt. No. 43), in the exercise of my discretion and the interest of justice, it is hereby

ORDERED that defendants recover from plaintiff Gerardo Figueroa and his counsel, Michael S. Fauci, Esq., jointly and severally, the sum of \$500 as reasonable costs and attorneys' fees incurred in having to move

to compel discovery based upon plaintiff's failure to comply with a prior court order.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: September 25, 2009  
Syracuse, NY